IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Konetski, David et al.	§	
	§	Confirmation No.: 7695
Serial No. 09/771,095	§	
	§	Group Art Unit: 2157
Filed: January 26, 2001	§	
	§	Examiner: Dalencourt, Yves
For: SYSTEM AND METHOD FOR USING RESOURCES OF A COMPUTER SYSTEM IN CONJUNCTION WITH A THIN MEDIA CLIENT	§	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Responsive to the Final Office Action dated April 14, 2008 and the Advisory Action, dated July 1, 2008 please consider the following remarks in connection with the pre-appeal brief request for review. Review of the final rejection is requested for the following reasons.

THE REJECTION OF CLAIMS 27, 29-46 AND 48-52 IS NOT SUPPORTED BY A *PRIMA FACIE* CASE OF OBVIOUSNESS FOR CLAIMS 27, 29-46 AND 48-52.

The claims rejected and pending are 27, 29-46 and 48-52.

Claims 27, 29-46 and 48-52 are rejected under 35 U.S.C. 103(a) as being anticipated by Michael Charles Raley (U.S. Patent No. 7,073,199) (Raley hereinafter) in view of John C. Platt (U.S. Patent No. 6,987,221) (Platt hereinafter). A *prima facie* case of obviousness is missing, however, at least because there is no support for an obviousness rejection of the claimed subject matter as a whole because Raley and Platt fail to disclose each element of the claims or suggest the missing elements.

When combined, the references do not teach the claimed subject matter

As the PTO recognizes in MPEP §2142:

> The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

The USPTO clearly cannot establish a *prima facie* case of obviousness in connection with the amended claims for the following reasons:

35 U.S.C. §103(a) provides that:

> [a] patent may not be obtained...if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.... (emphasis added)

Thus, when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated. However, it is submitted that the references, alone, or in any combination, at least, do not teach the elements of providing the authorized digital media content via a user interface to a thin media client without performing a digital rights management function on the thin media client, wherein the providing is performed by the personal computer, and wherein the thin media client comprises an input/output (IO) device coupled to the personal computer, as recited in independent claims 27 and substantially recited in independent claims 40 and 46, and defined throughout the specification and figures of the pending application.

The rejection concedes on page 3 of the Office Action mailed April 14, 2008 that "Raley . . . fails to specifically teach that the thin media client comprises and input/output (I/O) device coupled to the personal computer." Emphasis added. Similarly, it is submitted that Platt also fails to teach such elements of the pending claims.

The rejection points to column 17, lines 5-27 of Platt for teaching "an analogous auto playlist generation with multiple seed songs, wherein the thin media client comprises an input/output (IO) device coupled to the personal computer." Emphasis added. This argument is respectfully traversed.

The cited portion of Platt relates to Fig. 15, which includes a computer 1512 and a remote computer 1544. As defined in Platt,

> [t]he computer 1512 includes a processing unit 1514, a system memory 1516, and a system bus 1518. The system bus 1518 couples system components including, but not limited to, the system memory 1516 to the processing unit 1514. The processing unit 1514 can be any of various available processors. Dual microprocessors and other multiprocessor architectures also can be employed as the processing unit 1514.

Column 16, lines 7-14.

> Computer 1512 can operate in a networked environment using logical connections to one or more remote computers, such as remote computer 1544. The remote computer 1544 can be a personal computer, a server, a router, a network PC, a workstation, a microprocessor based appliance, a peer device or other common network node and the like, and typically includes many or all of the elements described relative to computer 1512.

Column 17, lines 28-35. Emphasis added. As such, neither computer 1512 nor 1544 of Platt teach being configured to leverage the processing, storage, and buffering capabilities of a different computer system.

As found on page 3 of the pending application the "term thin media client refers to a device that is configured to perform one or more functions using digital media content and is configured to leverage the processing, storage, and buffering capabilities of a computer system." Page 3, lines 24-27. Emphasis added. In addition,

> A principal advantage of this embodiment is that it allows a thin media client to use the resources of a computer system in a home network. The cost and complexity of the thin media client is reduced by having the computer system perform many of the processing and storage functions of the media client. In addition, resources of the computer system not normally found in a media client may enhance the features of the media client.

Page 2, lines 12-17. Emphasis added. Furthermore, the specification explains that

> [t]he functions and operations of three example thin media clients, audio client 110, video client 120, and image client 130, will now be discussed. . . Audio client 110 is configured to play audio from digital media content. Processor 112, memory 114, and network device 116 provide audio client 110 with the ability to operate and communicate with computer system 100 to retrieve digital audio content. In audio client 110, device 118 may be any audio device such as speakers or headphones capable of producing audio and may be located externally or separate from audio client 110. . . Video client 120 is configured to play video from digital media content. Processor 122, memory 124, and network device 126 provide video client 120 with the ability to operate and communicate with computer system 100 to retrieve digital video content. In video client 120, device 118 may be any video device such as a display screen capable of displaying video and may be located externally or separate from video client 120. . . Image client 130 is configured to display images or graphics from digital media content. Processor 132, memory 134, and network device 136 provide image client 130 with the ability to operate and communicate with computer system 100 to retrieve digital image content. In image client 110, device 118 may be any image or graphics device such as a display screen capable of displaying images or graphics and may be located externally or separate from image client 130.

Page 7, line 15 – Page 9, line 17. Emphasis added to provide examples.

Thus, it is clear that neither the computer 1512, nor the remote computer 1544 of Platt teach a thin media client, as recited in the pending claims and defined throughout the specification and figures of the pending application. In addition, the terms "thin" and "leverage" are not found in the specification of Platt. Therefore, it is also submitted that Platt **could not teach** a thin media client configured to leverage the processing, storage, and buffering capabilities of a computer system by having the computer system perform many of the processing and storage functions of the media client.

In light of the above, it is impossible to render the subject matter of the claims as a whole obvious based on a single reference or any combination of the references, and the above explicit terms of the statute cannot be met. As a result, the USPTO's burden of factually supporting a *prima facie* case of obviousness clearly cannot be met with respect to the claims, and a rejection under 35 U.S.C. §103(a) is not applicable.

Therefore, it is submitted that independent claims 27, 40 and 46 and their respective dependent claims are allowable.

Other reasons for the patentability of the pending claims have been previously presented and will be maintained should the filing of an appeal brief become necessary.

Respectfully submitted,

Bart A. Fisher
Registration No. 55,181

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HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: 512/867-8458
Facsimile: 214/200-0853
ipdocketing@haynesboone.com

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on July 11, 2008
Date

Y. Kim Reyes